

**Testimony of Jerome A. Gray
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Chairman Chabot and distinguished Committee members, it is a pleasure to have the opportunity to deliver this testimony before you on the topic of the ongoing need for Section 5 of the Voting Rights Act.

Prior to my 67th birthday on July 20th, I had a senior moment that moved me to draft a resolution for the Alabama Democratic Conference (“ADC”) celebrating the 40th Anniversary of the Voting Rights Act of 1965. The resolution noted that the Voting Rights Act of 1965 could not have passed without broad-based bipartisan, biracial support from the members of Congress and people of goodwill across America, who lobbied for that to happen. It recognizes that the Voting Rights Act has contributed greatly to a new spirit of race relations and cooperation in political and community affairs throughout Alabama; and that the Voting Rights Act has been largely responsible for the state having the highest percentage of black elected officials in the nation, based on the black percentage in the general population. The Voting Rights Act has helped to elect many white candidates in Alabama and throughout America since 1965. In fact, the Act has been responsible for helping to elect significantly more white candidates than black candidates in Alabama. Too often, this isn’t said.

What began as part of my effort on behalf of ADC prior to the 40th anniversary of the August 6th date on which President Lyndon Johnson signed the 1965 Act has expanded quickly and local governmental bodies across the state from Selma to Montgomery; from Birmingham to Huntsville; from the Jefferson County Commission to the Conecuh County Commission — my home town — are moving to adopt a 40th Anniversary Voting Rights Act resolution to recognize the role the Act plays in helping Alabama to strive toward political equality. Perhaps one of my greatest joys came when Larry Fluker, the mayor in my hometown of Evergreen, Alabama, got a resolution adopted in July. Consider this: In 1978,

Governor George Wallace appointed Larry Fluker's mother chairman of the Conecuh County Board of Registrars. She became the first black voter registrar in Alabama since Reconstruction. Then, some 26 years later, her son, who served as president of the local NAACP Branch for 35 years and who testified before a House Judiciary Committee Field Hearing in Montgomery back in June of 1981, is elected Mayor of Evergreen in August 2004. Yes, as we say in the church, nobody but God and the Voting Rights Act could have wrought that miracle.

I will see to it that the Committee receives copies of all of the resolutions as evidence of support from rank-and-file leaders in Alabama who directly experience the ongoing power and necessity of the expiring provisions of the Act.

Recently, when the ADC and the Alabama Voter Education and Registration Alliance celebrated the 40th Anniversary of the Voting Rights Act during a statewide convention in Birmingham on October 14th & 15th, we chose as our theme, "The Voting Rights Act . . . A March Miracle: Empowering a Powerless People."

One theme that was consistent throughout the gathering was the Act's uncanny ability to bring people together from different backgrounds to do good things for communities. Indeed, the Voting Rights Act has allowed a state like Alabama to climb off the bottom in terms of racial representation and fairness. Forty years ago Alabama had less than 12 black elected officials. Today, we have more than 850. In its last statistical report, the Joint Center for Black Political and Economic Studies ranked Mississippi and Alabama first and second in the nation in the number and percentage of black elected officials. Even Nina Simone might be pleased today to know that.

To illustrate the reach of the Voting Rights Act and its impact on society today, consider this line-up of participants that we had during our 40th Anniversary VRA Celebration: Rev. F. D. Reese, a Selma native, who was head of the Dallas County Voters League that invited Dr. Martin Luther King Jr. to come to Selma in 1965; Bishop Will Willimon, former dean of the chapel at Duke University, and the new presiding bishop of the North Alabama Conference of the United Methodist Church; four top white executives—Dr. Paul Hubbert, executive secretary of the Alabama Education Association; D. S. Burkhalter, President, Alabama AFL-CIO;

Steve Prince, Communications Director of the Alabama Trial Lawyers Association; and Joe Turnham, chairman of the Alabama Democratic Party, all talking about the impact that the Voting Rights Act has had on Alabama's major institutions and organizations since 1965. Before the conference ended, we had a session that was videotaped, called "A Time to Testify." During this session approximately 30 people stepped before the camera and said why they felt that the Voting Rights Act should be renewed. In that group were mayors, legislators, county commissioners, school board members, judges, and the lieutenant governor.

If I may borrow an expression from William Faulkner's novel "Light in August," he might describe the outstanding outcome of the Voting Rights Act this way: It's been 40 years of "peaceful astonishment."

But we should not confuse the success with obsolescence. I have personally witnessed that one of the most astonishing things about the Section 5 Preclearance provision is its ability to nudge public officials to act in a positive way and be more inclusive as they go about reaching a consensus in their decision-making process. Let me cite an example or two to make my point.

Just two months ago the Barbour County Commission was in the process of adopting a new redistricting plan. In the preclearance process the Justice Department discovered that the Barbour county Commission had never submitted some polling place changes dating back to the early 1990s. This delay or neglect in submitting these changes in a timely fashion caused the Barbour County Commission to seek our help in getting these late submissions precleared. One commissioner who called me recently is a car salesman. I like his style. He said: "Jerome, buddy, can you help us?" When I told him I would, he replied: "Buddy, come see us."

Without reservation, I can say that the Voting Rights Act, and Section 5 in particular, have made unlikely buddies of people who are ready, willing, and able to communicate in a civil, democratic way as we engage in the process of representative government and full civic participation. As we worked through this we also sought to address the redistricting issues. The county had a seven-member plan with three majority black districts, one of which had a white incumbent. In that district the Commission's first instinct was to draw a plan that reduced the black voting age population percentage by 8%. However, when I heard about their plan I called the Barbour County

Commission and told them that I would fully support almost any plan they developed so long as it did not retrogress or dilute the black vote in these majority black districts. At first they hemmed. Then I hawed a little, using Section 5 of the Voting Rights Act as my rabbit's foot. Soon thereafter, they invited me to help them in developing a fair plan. But I have my role and they have theirs so from a distance I said to them, "Y'all can do it. Just send me a copy of your plan when you're done." Well, you know what, they did better than I expected. And true to my word, I wrote a strong letter of support to the Justice Department, asking them to grant expedited consideration to the Barbour County redistricting plan in the preclearance process.

In another example, city officials in the town of Warrior, Alabama in Jefferson County, sought our input and the consensus of local citizens in determining what kind of election system they should have in order that they might keep two incumbents, both of whom are black, on their city council, and gain preclearance with a new plan. Again, the attractiveness of black community support in the Section 5 preclearance process for a new plan gave the community leverage to negotiate for good result.

For the record, I want to mention two more instances of how I used the threat of the Section 5 rabbit's foot for good in 2004, without involving a submission or preclearance. In the city of Lanett, Alabama in Chambers County, I received a telephone call from a voter, stating that the city clerk had been denying citizens the opportunity to pick up absentee ballot applications at city hall. Instead, the clerk was usurping her authority and taking the application forms to the voters' residences. I called the clerk and read a section from the Alabama Election Law Handbook to her, indicating that she had no authority to deny giving an absentee ballot application form to a citizen. I also told her that what she was doing amounted to a change in voting procedure that would have to be precleared by the Justice Department. In my own way I persuaded her that we did not need anyone from the Justice Department calling down here to tell us what was right to do. She obliged. The election ran smoothly. And Lanett elected its first black mayor in August 2004.

In my hometown of Evergreen, Alabama in Conecuh County, I received a similar call from a voter who complained about the city clerk's failure to produce a complete and fair voters' list. At first, many names were omitted, including that of my mother, who is a 94-year-old retired

educator. I called the city clerk and I got the former mayor on the phone, and I reminded them of the election fiasco that we had in 1980, when the city clerk at the time prepared a sloppy voters' list that omitted scores of black voters from the official list. A black candidate that we supported that year lost by four votes. Our Democratic organization and the NAACP documented the irregularities thoroughly. And we sent up a "carload" of affidavits and complaints to the Justice Department for review. Their botched list in 1980, along with our documentation, brought the "feds" in 1980. And things haven't been the same since.

In that case, with Section 5's help, we found out that the Conecuh County Commission had changed its election system from single-member districts to at-large after 1965, and had not gotten the change precleared. We also learned that the County Democratic Executive Committee had changed their election procedure after 1965 without submitting those changes for preclearance.

At any rate, my reminding the clerk and mayor about how all this happened because of a defective voters' list brought about a pledge of cooperation and mutual respect to prepare a fair list for the benefit of all. Election day went well. The City of Evergreen had its highest turnout in history at over 95%. We elected our first black mayor without a runoff. It was indeed "peaceful astonishment" in August of 2004.

Although the issue of monitoring bad proposals, such as changes in registration, voting or election procedures has decreased dramatically since 1982, there have been state laws harmful to minority political participation that have received our attention. The worst one was a law that sought to prevent any eligible voter from receiving an absentee ballot at a post office box or general delivery address. This provision was a part of an absentee ballot bill in 1997-1998. Fortunately, the Alabama Democratic Conference successfully challenged this absentee ballot post office ban in federal court. The three-judge panel struck down the provision as unconstitutional. Alas, if the law had been implemented thousands of eligible Alabamians would have been denied the right to vote because no mail is delivered to their residential addresses.

Earlier in my remarks I compared Section 5 to a rabbit's foot. I like that reference because if it takes a little rabbit to make folk do right, then I urge you to keep some rabbit provisions on the books. As a son of the

South, I know that a little more rabbit is not gon' hurt us. We're used to it by now. Section 5 is edible and digestible. We have made tremendous progress but we still must work to protect black voters and Section 5 makes that possible.